United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

74-1122

P/S

H.G. SKIDMORE
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TEL. NO. BO. 3-2444

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

H. G. SKIDMORE, Plaintiff-Appellant vs NATIONAL RAILROAD ADJUSTMENT BOARD THIRD DIVISION, -and- GEORGE P. BAKER, RICHARD C. BOND and JERVIS LANGDON, Jr., as TRUSTEES OF the property of PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR, Intervening Defendants-A ppelles.	DOCKET NO. 74 - 1122

ANSWER TO INTERVENING DEFENDANTS-APPELLES BRIEF.

The plaintiff-appellant, H. G. Skidmore, herewith acknowledges receipt of the brief for the intervening defendants-appelles pursuant to the case docketed as above No. 74 - 1122.

ISSUE PRESENTED FOR REVIEW

It appears more appropiate to the aggrieved employe who is seeking a review of two Awards of the National Railroad Adjustment Board that the questions involved in the expectation of having them set aside, in whole or in part, or for such other proceeding as the court may direct are:

(a) Did the employe proceed and handle his grievances in the proper and prescribed manner in accord with the rules of procedure for their handling up to and including the National Railroad Adjustment Board and in accord with the requirements of the Railway Labor Act?

(b) Did the Carrier's representatives handle the employe's grievance in the proper and prescribed manner in accord with the rules set down for the handling of grievances up to and including the National Railroad Adjustment Board and in accord with the dictates of the Railway Labor Act including Sections 152 Second and 153 (i)?

(c) Did the Third Division members of the National Railroad Adjustment Board comply with the full requirements of the Railway Labor Act, in respect to these two disputes, as stated in Section 153 (q) of the Act?

STATEMENT

The plaintiff-appellant, H. G. Skidmore, must again raise the question in view of the wording of Section 153 (q) of the Railway Labor Act as to whether it is permissible for anyone other than a member of the National Railroad Adjustment Board to intervene or defend an action of this type, for a review of an Award. The petitioner has set his reasoning before the lower court in his,"Affidavit In Opposition To Motion To Intervene", indexed item "B" and number 6 of file 73 C 901.

FACTS (a)

While it is a matter of only slight importance the employe has heretofore stated,"the record that indicates the Petitioner was originally a ticket seller is not correct for he only became one in August of this year.", it may suggest, however, that other submissions, too, are in need of verification.

The employe's claim on Award No. 19554 was not based on

the nationally negotiated collectively bargained Vacation A greement, only on the representative's insistance that they had the right to apply a local agreement in violation of my protected rights. Furthermore I have been unable to find wherein the representative s of the Carrier have previously stated that their Vacation Agreement was a post-Merger Agreement. The unuin representative's reply in denying a ssistance to protect, was,"At this location this is what is agreed upon, therefore, so long as you work at this location this will be the agreement under which you will work and is not contingent upon what is done at any other location." This answer, mind you, does not absolve the Carrier's duty to live up to it's agreed protection.

FACTS (b)

It is a matter of record that at the commencement of this grievance with my manager Mr. E. J. Gaynor there had only been a notice issued to the effect that the pass privileges were to be changed. There was the threat of loss at a future date and if no attempt was made to protect that which had been legislated by law and a contract for protection there would be further curtailments at some future date.

The matter of pass rights, rules and privileges are a fringe benefit of my employment and as such do not need any specific mention in the Merger Protective Agreement for they have not been excluded. A review of this Agreement will show

conclusively that they are included in the protection . Section 1(a) includes provisions for the Washington Job Protection Agreement wherein there will be found certain reference to free transportation. Furthermore in Section 1(b) in the sixth paragraph the wording is,

> "In consideration of the foregoing employee benefits the Merged Company shall be entitled to transfer the work of the employees protected hereunder throughout the merged or consolidated system and the labor organizations will, subject to provisions contained in the Memorandum of Understanding attached hereto as appendix F, enter into implementing agreements providing for the transfer and use of employees and allocation or rearrangement of forces made necessary by changes for which protection is herein provided and the employees, their organizations and the Carriers will co-operate to that end.",

and it is therefore considered because of the promises made prior to the merger the Companies relinquished their rights to lessen these privileges on the date the Merger was consummated.

It is true that A mtrak has made certain improvements other than was their original intention. There are, however, inequities that are in need of protection and correction and reference has been made thereto in the original presentation of the grievance to the employer. Further mention was made in the employe's submissions to the Adjustment Board also in some of the other briefs submitted during the processing of the petitions for review, especially that one labeled;

"Petitioner's supplement to original submission
in order to include
The National Railroad Passenger Corporation (Amtrak)"
pages 85 thru 95 of item 16 Docket entry "B" of appendix for File 73 C 901.

POINT I

A request of this tribunal has heretofore been made by H. G. Skidmore for a review of these Awards in their entirety. Therefore it will, no doubt, be found whether I have presented sufficient testimony to support my contentions that a reversal is in order for these Awards of the Third Division. Also whether 153 (i) or (m) or (Ninth) of 152 have been violated by the members of the National Railroad Adjustment Board. A careful review of Barrett v. Manufacturers Railway Co., et al, supra is in order for it is out of context with the case before the bar as are many of the other introductions by Mr. N. P. Patterson and Mr. Robert M. Peet.

To hide the merits of a case behind an Award such as has been delivered in these instances is tantamount to the edict, "Rome has spoken, the case is closed.", and approaches a dictatorial power that knows no redress.

POINT II

To point out once again that my interpretation of Section 153 (q) includes the wording that precedes "....On such review", seems imperative for there would be no other way to judge the issues fairly without opening up the full record therefore the the review is to be considered and carried out if either of the

parties is aggrieved by any of the terms of an Award or by the failure of the Division to include certain terms in such Award.

There have been precedents introduced by my opponents that have apparently not been thoroughly reviewed for many are out of context with the issues at hand. Show me one case that includes protection of non-negotiated agreements, legislation for protection, a change of the petitioner's intent and the ommission of an answer to a claim, then and only then may there be reason to forestall the setting aside of these decisions.

MISCELLA NEOUS

ONLY recently a COMPLAINT action was filed in the lower court for the protection of local pass rights and privileges, and, etc. by the plaintiff here involved. It is labeled Civil Action 74 C 185. The defendant Penn Central Transportation Company was offered the choice of coming in to confer with the Magistrate in his chambers or to transfer the case to the United States District Court in Philadelphia on its merits. The former choice was made. An offer was made, in good faith, to settle. An extension of time was requested by the defendant because of a conflicting engagement. A motion has since been entered in the United States District Court for the Eastern District of New York for dismissal of this complaint which has kept me from devoting my full attentions to the matter at hand. Therefore if any point has been overlooked by the plaintiff that requires an opposing answer consider it entered here for with so many fine points to be considered it would be poor law to be turned down on a mere technicality.

Notice should be taken that under Mr. Peet's caption "Facts (a) of his "Brief" that a correction should be made. For as Docket No. M.S. 19475 precedes Docket No. MS 19476 the latter must be the second claim that was before the Board and likewise under the letter (b) Docket Number MS 19575 becomes the third claim.

Each claim before the Board, the first, the second, the third followed the same rules of procedure and progression by the petitioner before reaching the Board.

In the first claim Award No. 19553 (although not up for review, at present) the Third Division has not answered that part of the claim dealing with an abridgment of the Pre-Merger Agreement. Petitioner was, however, before the Board properly.

In the second claim before the Board which resulted in Award No. 19554 that part of the claim that alleges an abridgment of the Employes Pre-Merger Protective Agreement is relegated to an Adjustment Board to which the employe has no entree as an individual or even via the avenue of the labor representative for that representative had agreed, even prior to the merger, in a local agreement with management, to an arrangement that deprives the union member of his full complement of vacation days, depending on the days of rest, and has refused to protect in accord with the promises made in the Merger Protective Agreement. The employe was, however, properly before the Board for the Award was against the claimant

although delivered on a question or claim that was not before them.

In the third claim before the Board which resulted in Award 19454 in that part of the claim that alleged the Employees Pre-Merger Protective Agreement contract had been abrogated, the members of the Board ruled that it was not properly before them. It should also be noted that the February 7, 1965 A greement was not a part of the petitioner's claim and had not been introduced into the controversy by him.

A review of this grievance will indicate that the most important point of the submissions to the Board have been given no consideration. Fact number one is that the employe was not given a hearing on request. Fact number tow is that the employe was not even permitted to have a grievance.

Because the Board ruled on the claim of "just compensation", contingent on whether the restrictive rules were applied or withheld until the grievance was completed, he was before the Board properly. The employe therefore respectfully suggests that he must have also been before the Board properly with respect to the Merger Agreement. The Board has taken the initiative by making an opinion on a Federal Law, that is not within their jurisdiction to interpret. The Third Division's Award No 19454 should be set aside for the Third Division has failed to comply with the requirements of the Railway Labor Act, failed to confine itself to matters within the scope of its jurisdiction and has fraudulently ruled in making this Order.

I consider it only appropiate to introduce here Webster's definition of fraud; b) in law, intentional deception to cause a person to give up property or some lawful right.

In these grievances the labor organization has failed to protect the guaranties given the employes and the claimant has come to realize in the progression of these grievances that technically speaking the protection sought was not within their jurisdiction especially Award 19454 for it was not based on a negotiated rule except during the processing. It has also been found that if the union representative fails to, will not, or can not protect it is the employe's responsibility to take the necessary action himself and that is why these matters are before this tribunal.

Railroad Adjustment Board's decisions are not final ~~and~~ in legal sense. Jones v Central of Georgia Ry,Co.,D.C. Ga. 1963, 220f. Supp 909, Affirmed 331 F 2d 699.

Provisions in par (m) of this sec. that awards of the Board shall be,"final and binding",by quoted words may make decisions of the Board more effecacious than mere private advice, but did not invest them with the force of unappealable judicial decisions.

Third Division Award 17156 - Carrier did not follow proper rules of procedure - There is reversible error.

Vol. # 61 C.C.H. 1969-1970 Case 10588 B.J. Diamond Plaintiff-Appellee v Terminal Railway Alabama State Docks Defendant-Appellant United States Court of Appeals Fifth Circuit No 27588 January 9, 1970 On appeal from United States District

Court Southern District of Alabama. Railway Carrier failed to initiate a hearing, as required by a contract and Adjustment Board ruled in favor of employe.

These two Awards of the National Railroad Adjustment Board Third Division indicate a biased and prejudicial attitude toward the claimant among other things and have attempted to deprive him of his right of due process and in addition have tended to deprive him of the protection afforded by an order of the Interstate Commerce Commission the question in conclusion is;

Did the court below err in affirming the Awards Nos. 19554 and 19454 of the National Railroad Adjustment Board Third Division?

Respectfully submitted,

H. G. Skidmore

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TEL: BO 3 - 2444

Sworn to before me this
20th day of May, 1974

Elizabeth Richardson

ELIZABETH RICHARDSON
NOTARY PUBLIC, State of New York
No. 24-8565130
Qualified in Kings County
Cert. Filed in New York County
Commission Expires March 30, 1976

H. G. SKIDMORE, Plaintiff-Appellant

STATE of NEW YORK)
)
COUNTY of QUEENS) S. S.

74 - 1122

AFFIDAVIT
of
SERVICE by MAIL

I, H. G. Skidmore, the plaintiff-appellant in the above docketed civil action before the United States Court of Appeals for the Second Circuit do hereby attest and certify that I have forwarded a true and correct copy of the papers attached herewith in a securely sealed postage paid wrapper, properly addressed, by depositing them in the letter drop regularly maintained and exclusively controlled by the United States Government at the Main Post Office Building located on 8th Avenue between 31st and 33rd Streets in the Borough of Manhattan City and State of New York on this the 20th day of April, 1974.

H. G. Skidmore

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